

## RE: CWA Section 608 American Iron and Steel (AIS) requirements

Wed 5/25/2016 4:25 PM

To: Torres, Tomas <Torres.Tomas@epa.gov>;

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Anderson, William <Anderson.William@epa.gov>; Connor, Timothy <Connor.Timothy@epa.gov>; Strauss, Alexis <Strauss.Alexis@epa.gov>; Stein, Raffael <Stein.Raffael@epa.gov>;

Hello Tomas, as you prepare to meet with Mr. Lang, please connect with our AIS team (specifically William Anderson and Tim Connor – copied above). They have been engaged around this issue over the last several months.

Thanks

Andrew D. Sawyers, Ph.D.  
Director  
Office of Waste Water Management  
U.S. Environmental Protection Agency  
Office of Water  
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**From:** Strauss, Alexis  
**Sent:** Friday, May 20, 2016 6:39 PM  
**To:** Rudy Lang III <[rudylang3@internationalvalve.com](mailto:rudylang3@internationalvalve.com)>; McCarthy, Gina <[McCarthy.Gina@epa.gov](mailto:McCarthy.Gina@epa.gov)>  
**Cc:** Shapiro, Mike <[Shapiro.Mike@epa.gov](mailto:Shapiro.Mike@epa.gov)>; Torres, Tomas <[Torres.Tomas@epa.gov](mailto:Torres.Tomas@epa.gov)>  
**Subject:** RE: CWA Section 608 American Iron and Steel (AIS) requirements

Dear Mr. Lang,

Thank you for your letter. Our Water Division Director, Tomas Torres, would be pleased to meet with you on this matter and will be contacting you to set up a mutually convenient time. I'm hopeful we can address the concerns you raise.

Kind regards,  
Alexis Strauss

Alexis Strauss  
Acting Regional Administrator  
E.P.A. Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
415-972-3572

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**From:** Rudy Lang III [<mailto:rudylang3@internationalvalve.com>]  
**Sent:** Friday, May 20, 2016 3:33 PM

**To:** Mccarthy, Gina <[McCarthy.Gina@epa.gov](mailto:McCarthy.Gina@epa.gov)>; Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>

**Cc:** Shapiro, Mike <[Shapiro.Mike@epa.gov](mailto:Shapiro.Mike@epa.gov)>

**Subject:** Section 608 of the Clean Water Act's (CWA) American Iron and Steel (AIS) requirements

May 20, 2016

Ms. Gina McCarthy, Administrator  
USEPA Headquarters  
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1200 Pennsylvania Avenue, N.W.  
1101A  
Washington, DC 20460

Ms. Alexis Strauss  
Acting Regional Administrator  
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75 Hawthorne Street  
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Dear Ms. McCarthy and Ms. Strauss:

Thank you in advance for whatever support you can offer.

My name is Rudy Lang III. I am President of International Valve a small, family-owned valve manufacturer located in Sugar Grove, IL. We produce valves used in wastewater treatment and drinking water projects. We believe our valves are superior to those of our competition in terms of design, quality and durability. Hugely significant is the fact that we are proudly 100% compliant with all provisions of Section 608 of the Clean Water Act's (CWA) American Iron and Steel (AIS) requirements. The Act mandates that public works projects funded by the Clean Water State Revolving Fund (CWSRF) use iron and steel products manufactured in the United States (U.S.).

The purpose of my letter is to ask your assistance in arranging a meeting with a representative from USEPA's DC office, Tomas Torres, USEPA Region 9 Water Division Director, and Region 9's supervisor who oversees the CWSRF. My team will meet at the convenience of all.

My request for a meeting is to highlight our frustration as a company trying to do the right thing in meeting the AIS requirements of the CWA while cities such as Fresno, CA appear (we suspect) to approve the use of valves that are made in South Africa. Clearly, if this is the case, they are not compliant with the Buy American provision of the CWA. This puts my company at an extreme disadvantage and is

directly contrary to both the letter and spirit of American Iron and Steel Requirements as part of the Consolidated Appropriations Act, 2014 and effectively eliminates us from project awards. There seems to be little to no enforcement of municipalities by USEPA relative to this issue which I have been raising now for two years and it is quite frankly—troubling. What is USEPA's role in assuring honest compliance with the law? We are hoping you can intervene and provide us with some direction in terms of USEPA's approval of such valves and what steps we can take to level the playing field vis-à-vis our compliant valves. Ms. McCarthy, it is vital that your office be involved as this situation extends beyond the Fresno situation.

### **Summary of Concerns**

Essentially, RF Valves (the U.S. distributor of the South African-made Vent-O-Mat valves) has bid on an AIS- specified job for air valves to the City of Fresno, CA. Succinctly, we are doubtful that RF Valves has the capability to make these valves and more specifically to make them from American made steel, as distinct from manufactured by assembly of fully or partly imported components (which would not qualify as compliant to AIS).

Using a FOI request to Fresno (relative to trying to secure evidence of AIS compliance on this drinking-water pipeline project), we received five supplier letters acknowledging that their products would/could be compliant. Four of the suppliers were very definite in stating the products they supplied were compliant. The RF Valves letter was different; it said their valves "CAN" be compliant, and finished off with the caveat, "...provided this requirement is specifically stated in the purchase order."

This qualification by RF Valves is troubling. Following a typical supply protocol, the valves would first be ordered by the contractor who won the project bid from the local valve distributor, who would then place an order through the local RF Valves sales representative, who would then place the order with RF Valves. So you can see there are several steps where the AIS requirement could be omitted. If this is happening, RF Valves may feel justified in not delivering the AIS-compliant valves even though they are blatantly aware that the project requires AIS valves. Admittedly, this is speculation on my part.

It is important to know that we are aware RF Valve has backed out of supplying similar valves in a different state because (we are told) the RF Valves sales representative (different from Fresno representative) said RF Valves can't comply with the AIS requirement. Sadly, we have no written proof.

**Background** By way of background, I initially elevated this issue in September 2014 when we registered a complaint with the State of Oregon Department of Environmental Quality (I realize this is not in Region 9) regarding the use of steel

products which we suspected did not meet the AIS requirement in a project called Big Creek Force Main Project, City of Newport, OR, contract number 2012-024. The specifications for this project required compliance with the AIS clause. Due to our suspicions, we made inquiries to verify that the appropriate documentation had been supplied. It had not. The ultimate outcome of that complaint was that the installed product was removed and replaced with products that do meet the AIS clause. I am proud to say we were the replacement source for these valves.

The Vent-O-Mat brand of valve installed in this project was manufactured by:

DFC Water

32 Lincoln Rd, Benoni 1502, South Africa  
+27 11 748 0200

<http://www.dfc.co.za/>

The North American agent for the South African Product is:

RF Valves

1342 Charwood Rd., Suite A

Hanover, MD 21076  
Tel: 410-850-4404 • Fax: 410-850-4464

<http://www.ventomat.us/>

As a continuing practice, RF- Valves publishes, in bids and on its website that: "Vent-O-Mat valves ... qualify for ... American Iron & Steel (AIS), if specified." It is our understanding the RF-Valves is principally a warehouse and sales agent not a manufacturer. Supporting this belief is the following statement also from their website, "We are proud to represent the best brands and products on the market."

Between 1996 – 2009, (prior to AIS requirements) we were the North American importer and representative of the South African valve manufactured by DFC Water under the brand Vent-O-Mat and we are, therefore, somewhat familiar with their operations and business structure. In 2009, we engineered our own patented valve and DFC Water purchased RF Valves, a distributor to serve as their agent in the U.S. going forward. As a manufacturer of a very similar product line, it stretches credibility to believe that a domestic manufacturing facility has been established to co-produce the valves currently manufactured in South Africa just for the occasion that the AIS contract clause applies.

**Complaint Filed with USEPA- OIG** On April 29, 2015 I placed a call to the OIG hotline (hoping to elevate my general concerns regarding the compliance of RF Valves products) and followed up with an e-mail to Special Agent Clay Brown and registered a formal complaint with the OIG. Here is what I stated, "As a domestic manufacturer, I am well aware of the added costs of requiring American Iron and Steel. We strive to keep the impact of this added cost to minimum effect on our pricing structure. For us, the added cost is simply the increased cost of raw materials because our labor and manufacturing overhead remain proportionally fixed. However, there are real added costs."

On August 31, 2015, Special Agent Clay Brown forwarded my complaint to the Special Agent in Charge for Hotline 2015-233.

On September 18, 2015, I was advised by OIG Special Agent, Jessica Knight that she was assigned my complaint regarding RF Valves.

On December 9, 2015, Ms. Constance Satchell, Criminal Investigator, Special Agent (SA) emailed to inform me that she had been assigned as the Lead Case Agent in the matter regarding RF Valves due to jurisdiction reasons. At this point Ms. Satchell was in possession of numerous documents I had shared previously with Mr. Brown and Ms. Knight. To date, the only feedback I can get from the OIG is that they are, "unable to comment on an ongoing investigation, or provide guidance, comments, etc."

**Attempt to Secure Competitor's Certificate of Compliance** In August 2015, relative to the Recycled Water Transmission Main, Southwest Quadrant, Project SW1B, Fresno, CA, Project ID: TC00096, it was reported to us that RF Valves quoted prices 25% below their standard pricing. Are we to believe they meet AIS requirements with NSF certified products that are manufacturing- location specific and can do so at 25% below their standard imported pricing structure? Our follow-up efforts on this project yielded an undated document from RF-valves certifying that the valves for this project "can" be AIS compliant provided that "this requirement is specifically stated on the purchase order." While not a Certificate of Compliance, this document demonstrates an awareness of the AIS requirement and a commitment to comply. This information was shared with Ms. Knight on October 15, 2015 and with Ms. Satchell on March 7, 2016.

**Contact with California Water Board** On February 25, 2016, a FOI request was sent to a Mr. Christopher Stevens, Supervising Engineer, State Water Resources Control Board requesting affirmative manufacturer's certification that the valves supplied for this project were compliant with the AIS requirement. Confirmation of my request was received March 11, 2016 from Keisha Kelley, Custodian of Records.

On March 18, 2016 I received the following responses from Keisha Kelley, California Water Board to seven questions I posed.

Her responses are in red

1. I am not familiar with the distinctions you are making between the Consolidated Appropriations Act, Buy American Requirements, AIS and Buy American. It is my understanding that the 'Consolidated Appropriations Act of 2014' included the 'Buy American Requirements' known as 'American Iron and Steel' (AIS). Would you elaborate on where I could find additional information on the more stringent Buy American that you mention? **You are correct. There is no distinction in the "Consolidated Appropriations Act of 2014" between the "Buy American Requirements" and "American Iron and Steel" (AIS). Furthermore, the Water Resources Reform and Development Act of 2014 made AIS a permanent requirement of the CWSRF for treatment works projects.**
2. Does the California Water Board require that manufacturers of AIS- compliant products provide certifications and/or supporting documentation to confirm that the products provided are in compliance with the law?  
**The Water Board does not have any authority to require manufacturers to provide any information to financing recipients or to the Water Board. The CWSRF requires recipients as part of the financing agreement to use only AIS compliant products and materials. The CWSRF recipient is responsible for using and documenting the use of AIS- compliant products and materials. EPA has provided guidance to financing recipients on its Web site (<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>) on how best to do that.**
3. Is the loan recipient's signature on the financing agreement signed prior to project commencement sufficient to verify AIS compliance to the EPA? **No.** Are there any other enforcement or compliance efforts made? **EPA's guidance is thorough on how both applicants and the states should go about ensuring compliance. As noted in our original email below, Water Board staff checks on AIS compliance as part of its routine inspections of projects. In addition, EPA has recently done some of its own training/inspections here in California.**
4. Is the loan recipient contractually covered simply by including the Buy American Requirements in their solicitation of bids? **No. Please see EPA's guidance on the best method of documenting compliance.** It is my understanding that it is the loan recipient's obligation to ensure compliance. **The financing recipient is primarily responsible for compliance. The Water Board is responsible for overseeing the applicants' compliance with the requirement. EPA is responsible for overseeing the Water Board's compliance with the AIS**

**requirement.** Does their obligation extend beyond simply including a clause in their construction contract? **Yes. Please see EPA's guidance on documenting compliance.**

5. If non-compliant material were used on a project requiring AIS products, how would this be exposed? **The most likely methods for detecting non-compliance are an inspection by Water Board staff, a complaint by a member of the public, a competing manufacturer, or a whistleblower, or self-reporting by the financing recipient. Other methods of detection may also be possible.**
6. As you have likely surmised, I suspect non-compliant material has been used on this project. It seems your office has no information available to demonstrate one way or the other. Is this correct? **At this point the Water Board has no information to indicate that any non-compliant product or material has been used on the project. The financing agreement was only recently executed in September 2015, and as we indicated in our original response, construction only recently started. Therefore, our staff has not conducted an inspection to date. If you have specific information regarding potential non-compliance, please provide this information to us so that we can investigate and take appropriate action.**
7. Furthermore, is it correct that your office has no expectation of obtaining this information? **The Water Board does not require that applicants submit their AIS compliance documents to us. As noted earlier, financing recipients are responsible for using compliant products and material, documenting compliance, and maintaining compliance records. If I understand correctly, the loan recipient will determine how they'll track AIS requirements during construction and decide what documentation to keep in-house. This is surprising and contrary to the guidance I have seen issued by the Federal EPA. You are correct that financing recipients are responsible for tracking AIS and maintaining the appropriate documentation. This practice is consistent with EPA's guidance. Please see the answers to Questions 25 and 26 in their guidance document at <https://www.epa.gov/sites/production/files/2015-09/documents/ais-final-guidance-3-20-14.pdf>. Given this, I can only conclude that I should not expect a FOIA request to the City of Fresno for documentation demonstrating even cursory compliance to discover any useful documentation. Do you agree? **No, we do not agree. We suggest you contact the City if you wish to obtain information from them.****

**FOI request to the City of Fresno** Also on March 18, 2016, the FOI request mentioned above in this letter was sent to Mr. Bruce Rudd, City Manager Fresno, CA.

As of May 17, 2016, my understanding from the City of Fresno is that in addition to the five certificates of compliance mentioned above, additional documents exist relative to my request but they have been deemed exempt from disclosure due to their copyright status. The copyright holder has been identified as the South African company, Aveng, parent Company to DFC Water. These documents have been described as “a diagram and some kind of specifications for material” which acknowledged the AIS requirement but these documents do not constitute an affirmative Certification of Compliance. In response, we have respectfully requested that the City of Fresno demand that a definitive, unqualified Certificate of Compliance from this manufacturer be supplied within a reasonable time. (7 days) Further, we requested subsequently that they inform us in writing of:

- 1) This manufacturer’s refusal to provide the requested documentation, or
- 2) A copy of their Certificate of Compliance, or
- 3) A written statement indicating the city’s reluctance to enforce compliance.

Despite assurances from Keisha Kelley, Custodian of Records - California Water Board on March 17, 2016 that the City of Fresno certifies that all products used in the Fresno project will be AIS compliant and produced in the U.S., there appears to be no enforcement of compliance or even a method to support documentation of compliance. Rather, construction contractors need only to “acknowledge compliance.” My months-long follow-up efforts produced no documented proof of our competitor’s compliance. Thus, my request for your assistance.

Meanwhile, our sales rep requested to see RF Valves certification on the Fresno job and got the same document provided at the time of quote – each undated and identical in all respects. On March 1, 2016 I emailed the additional information to Constance Satchell. “Attached, please find a letter from RF Valves stating that, ‘RF Valves, Inc. / Vent-O-Mat USA can supply compliant Vent-O-Mat air release, vacuum break valves under the American Iron and Steel (A.I.S.) provision in the Consolidated Appropriations Act of 2014.’ This certification further qualifies, ‘provided this requirement is specifically stated in the purchase order.’”

**Supporting Documentation Lending Credence to My Concern** On February 3, 2016 I sent the following email to Constance Satchell providing details about my suspicions related to two other projects. The first is a project in South Dakota called Brandon Road Lift Station Parallel Force Main. This is an SRF funded AIS- required project. (SRF No C461232-35). “There are two valve manufacturers approved in the

specifications, International Valve's Vent-Tech product (us) and RF Valves' Vent-O-Mat product (them). We have been informed that the purchase order for these valves was placed by the contractor to HD Supply, a nationwide waterworks distributor who will be supplying RF Valves' Vent-O-Mat product. The revenue value for the valves on this project exceeds \$100,000.00. As you know, we have substantial doubts regarding the AIS compliance of RF Valves: Vent-O-Mat product and its country of origin. My business and the livelihood of my employees are dependent on a fair playing field. With the value of the U.S. dollar on the rise against foreign currency, the incentive to substitute import product for domestic only increases.

"Perhaps it is my frustration that causes me to ask, but what is my short term recourse? Without asking you to violate protocol, is there any advice you can offer? No certification of compliance is required until after the product is ordered, delivered, and installed. There is no prior opportunity to verify compliance. At the completion of a project there appears to be very little, if any, verification of compliance. The system is being played at the expense of the compliant American manufacturer. On the rare occasion they are asked to provide a certification of compliance, they simply claim ignorance.

The second project of concern is the Gilmore Road Pump Station, Hamilton, OH. We are informed that RF Valves cannot meet the AIS requirement and we have been requested to supply a compliant valve for re-sell on this project. Is it this sales representative's purchase order to RF Valves that must specifically state the requirement? Is this the intent of RF Valves qualifying condition, 'provided this requirement is specifically stated in the purchase order'?

**Impact to Domestic Manufacturers** "Requiring domestic manufacturers to meet AIS requirements while competing with an import product is both unfair and untenable, tricks of accounting and qualified promises notwithstanding. The financial impact to us of this uncertainty is real. It is seen either in lost opportunities or in lost margins caused by the competitive pressure of import pricing. We have never imported components for the manufacture of our product. We believe we are a competitive and efficient domestic manufacturer of these valves. How we manage the current scenario has a large impact on the future of our business and employees."

**Request for Assistance** Has USEPA ever brought an enforcement action against a vendor claiming it manufactures AIS-compliant valves in the U.S. but has been found to be lying? If not, what is the risk in not complying?

Numerous industry sales representatives have advised us that RF Valve does not make valves in the U.S. They may assemble some parts at a Maryland facility but I do not know if that is accurate. There has already been one instance where their

valves were installed in Newport, OR project but then removed when they were pushed to certify AIS compliance. We have been stymied on every front by the City of Fresno in terms of getting a straight answer to securing documented proof that RF Valves products are AIS-compliant. I believe the City of Fresno simply does not have the documentation.

As you can clearly see, for two years I have been sadly getting the runaround and have been buried in paper that subverts an honest and direct answer to my fair and rational inquiry; thus my appeal to both of you. Ms. McCarthy, we specifically need your help so we can understand what we need to do to establish a path forward that gives our AIS-compliant company a fighting chance to effectively compete as we are confronting this situation in California, Ohio and South Dakota and expect to confront it elsewhere. Time is of the essence as another Fresno project will be bid on June 7<sup>th</sup>. A similar situation is unfolding in Sacramento, CA for the Echo Water projects where all indications are that RF Valve is low bidder. As a small company, the investment in time and resources pursuing an answer akin to the search for the Holy Grail is tremendous and burdensome. I continue to divert my valuable time away from running my business (a business that feeds the families of my employees) pursuing various agencies and staff in search of an honest answer to a simple question I elevated two years ago and continue to elevate with no resolution. I have to believe this is of concern to USEPA and thus my direct appeal to you.

I am deeply troubled that the lack of enforcement by USEPA is tantamount to an endorsement of a non-domestic product for use in an AIS project and provides a template for other cities accepting federal dollars to similarly circumvent the AIS requirements. How can it be the recipient's responsibility to document compliance? This makes no sense as it is comparable to the fox guarding the chicken coop. I believe the City of Fresno, as the SRF recipient, has an obligation to obtain a definitive Certificate of Compliance that these valve were manufactured in accordance with AIS requirements as part of the Consolidated Appropriations Act, 2014.

I apologize for the length of this letter. It speaks to my determination in getting a straight answer to the question: where are RF Valves used in construction projects across the country being manufactured? Are they AIS-compliant or not? It seems that you could ask RF Valves to tour the facility in which they are purported to manufacture valves to know with certainty the answer to my question and to get assurances (or not) for yourselves. I have to believe you want contractors to comply with the law. All I want is a level playing field for my AIS-compliant company. I owe it to my employees to aggressively pursue this until it is resolved. As I said at the beginning of my letter, please know how grateful I will be for your assistance in brokering the meeting I am requesting as I am spinning my wheels at this point in

time as you can see from the exchange of emails I have shared. (I have many more if you need further detail.) And, I am in the dark as to the status of OIG's investigation. I await a response from your office.

Respectfully submitted,

Rudy Lang III  
President, International Valve

cc: Michael Shapiro, Principal Deputy Assistant Administrator, USEPA  
Headquarters  
Tomas Torres, Water Division Director, USEPA Region 9



<image003.jpg>